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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/151937

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 08, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$3,071 for the period of December 6, 2012 – May 31, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On December 6, 2012, the Petitioner signed and submitted an application for FS benefits. Petitioner's household size is three.

3. The Petitioner receives a monthly payment of \$2,250 in dividend income from a trust fund. He reported this income to the agency when completing the application for FS benefits.
4. The agency failed to include the Petitioner's dividend income in determining his eligibility for FS benefits.
5. On December 28, 2012, the agency issued a Notice of Decision to the Petitioner notifying him that his household would receive \$441 in FS benefits for the month of December, 2012 and \$526/month effective January 1, 2013.
6. On May 17, 2013, the agency issued a Notice of Decision to the Petitioner notifying him that his FS benefits would end on June 1, 2013.
7. On August 6, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner notifying him that the agency intends to recover an overissuance of FS benefits in the amount of \$3,071 for the period of December 6, 2012 – May 31, 2013. It noted the overissuance is the result of agency error in failure to budget unearned income.
8. On September 5, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The agency is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS benefits than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook (FSH), § 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Unearned income must be counted in determining a household's eligibility for FS benefits. Dividend income is unearned income that must be counted. 7 C.F.R. §273.9(b) and FSH, §§ 4.3.4.1 and 4.3.4.2.

In this case, there was clearly an agency error in not counting the Petitioner's monthly dividend income in determining his eligibility for FS benefits. The agency concedes the error. The Petitioner argues that he should not be responsible for repaying the benefits because of agency error. He also asserts that he originally contacted the agency to apply for disability benefits, not FS benefits. He only signed the FS application after the agency worker told him he was eligible for benefits.

The FS regulations require the agency to recover any overissuance of FS benefits, even if it is a result of agency error. Therefore, even if the agency erred in telling the Petitioner that he was eligible for benefits, it must recover any overissuance.

I reviewed the agency information regarding its calculation of the overpayment. In determining the eligibility of a household for FS, the agency must consider earned and unearned income to determine if the household meets the gross income eligibility test. In this case, a household of three must have monthly gross income of \$3,182 or less in order to pass the gross income eligibility test. The Petitioner's monthly household income was \$2,250 for all months pertinent hereto and he therefore met the gross income eligibility test.

Once a household passes the gross income eligibility test, the agency applies certain deductions to gross income to determine if the household meets the net income eligibility test and, if so, determine the amount of benefits to which the household is entitled. The deductions include a standard deduction,

which was \$149 per month for a three-person household during the overpayment period. 7 C.F.R. §273.9(d)(1); FSH, § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

In this case, the agency subtracted the standard deduction of \$149 from the Petitioner's gross income of \$2,250 to arrive at a net income figure of \$2,101. I note that the Petitioner testified that he currently does not have shelter expenses. To meet the net income test and be eligible for benefits, a household of three must have net income of \$1,591 or less. The Petitioner's net household income exceeded the net income limit and he was not, therefore, eligible for FS benefits. The agency worksheets show its calculations and reason for seeking to recover all benefits issued to the Petitioner between December 6, 2012 – May 31, 2013.

I understand the Petitioner's frustration, especially as he did not intend to apply for FS benefits until the agency worker told him that he was eligible. He could not know that the worker had not properly determined eligibility. However, the regulations require the agency to recover any benefits to which the Petitioner was not entitled. The agency has demonstrated that the Petitioner was not eligible and received benefits to which he was not entitled. Therefore, the agency has met its burden and may recover \$3,071 from the Petitioner.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$3,071 from the Petitioner for the period of December 6, 2012 – May 31, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of November, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 1, 2013.

Washington County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability